

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

NOV 20 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY RKN DEPUTY

MARK ORTEGA, individually and on behalf
of all others similarly situated, §

Plaintiff, §

vs. §

CORNERSTONE AUTO PROTECTION
INC., CALL HANDLES, LLC, §

Defendants. §

Case No. SA-24-CV-00573-XR

PLAINTIFF'S MOTION FOR CLERK'S ENTRY OF DEFAULT

Plaintiff, Mark Anthony Ortega ("Plaintiff"), requests that the Clerk of Court enter default against Defendant Cornerstone Auto Protection Inc. ("Cornerstone"), pursuant to Federal Rule of Civil Procedure 55(a). In support of this request, Plaintiff states the following:

SUMMARY

1. The proof of service (ECF No. 9) demonstrates that Cornerstone was properly served with a copy of Plaintiff's Original Complaint (ECF No. 1) in this case on September 16, 2024.

2. More than twenty-one (21) days have elapsed since the date of service of process, and Cornerstone has failed to answer, challenge, or otherwise defend as required by Federal Rule of Civil Procedure 12(a)(1)(A) and as demonstrated by the record in this action and by the Declaration of Mark Ortega filed concurrently with his motion.

BACKGROUND

3. On May 27, 2024, Plaintiff filed his Original Complaint (ECF No. 1) against Cornerstone in this suit seeking monetary relief for violations of the Telephone Consumer

Protection Act (“TCPA”), 47 U.S.C. § 227 et seq., and the Texas Business and Commercial Code, Chapter 302.

4. Plaintiff properly served Cornerstone with the Complaint and Summons on September 16, 2024 (ECF No. 9).

5. Cornerstone has not appeared in this action.

ARGUMENTS AND AUTHORITIES

6. The Clerk of Court must enter a default against a party who has not filed a responsive pleading or otherwise defended the suit. Fed. R. Civ. P. 55(a); *see N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996).

7. The Clerk should enter a default against Cornerstone because it did not file a responsive pleading within 21 days of service. Fed. R. Civ. P. 12(a)(1)(A)(i); Fed. R. Civ. P. 6(d); *see* Fed. R. Civ. P. 55(a).

8. The Clerk should enter a default against Cornerstone because it did not otherwise defend the suit. Fed. R. Civ. P. 55(a).

9. Because Cornerstone did not file a responsive pleading or otherwise defend the suit, it is not entitled to notice of entry of default. *See* Fed. R. Civ. P. 5(a)(2); *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141-42 (5th Cir. 1996).

10. Plaintiff is therefore, entitled to entry of default against Cornerstone because it has failed to file an answer to the Original Complaint or any other responsive pleadings. This entry of default is authorized by Rule 55 of the Federal Rules of Civil Procedure.

PRAYER

For the foregoing reasons, Plaintiffs respectfully request the Clerk of Court to enter a default against Defendant Cornerstone in this matter.

Dated: November 18, 2024

Respectfully submitted,

Mark Anthony Ortega
Plaintiff, Pro Se

By: 

mortega@utexas.edu

152 Bedingfeld Dr

San Antonio, TX 78231

Telephone: (210) 744-9663

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WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARK ORTEGA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

**CORNERSTONE AUTO PROTECTION
INC., CALL HANDLES, LLC,**

Defendants.

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Case No. SA-24-CV-00573-XR

DECLARATION IN SUPPORT OF CLERK'S ENTRY OF DEFAULT

I hereby certify that I, Mark Ortega, am the Plaintiff in the above cause, and that Defendant Cornerstone Auto Protection Inc. ("Defendant") was served on September 16, 2024 as evidenced by the Proof of Service. (ECF No. 9)

I further certify that the Defendant has failed to serve an answer or other responsive pleading; the Defendant is neither an infant (under age 21) nor an incompetent person; the Defendant is not in the active military service of the United States of America or its officers or agents or was not six months prior to the filing of the case. Therefore, the Clerk is requested to enter a default against said Defendant.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: November 18, 2024

Mark Ortega
Plaintiff, Pro Se

By: 

mortega@utexas.edu
152 Bedingfeld Dr
San Antonio, TX 78231
Telephone: (210) 744-9663

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Case No. SA-24-CV-00573-XR

CLERK'S ENTRY OF DEFAULT

The Plaintiff, Mark Ortega, having filed a Complaint (ECF No. 1) on May 27, 2024 and the Defendant Cornerstone Auto Protection Inc. having failed to plead or otherwise defend as required by the Federal Rules of Civil Procedure, and the time for responding having expired;

IT IS ORDERED, that the Clerk enter the default of the Defendant, Cornerstone Auto Protection Inc..

By: _____
Clerk of Court

Mark Ortega
152 Beddingfield
San Antonio, TX 78231



U.S. District Clerk's Office
262 West Nueva Street, Room 1-400
San Antonio, TX 78207

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